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9  
10 **BEFORE THE**  
**MEDICAL BOARD OF CALIFORNIA**  
11 **DEPARTMENT OF CONSUMER AFFAIRS**  
12 **STATE OF CALIFORNIA**

13 In the Matter of the Accusation Against:

Case No. 800-2016-027417

14 **Derakhsh Fozouni, M.D.**  
15 **555 E. Tachevah Drive**  
16 **Suite 2W-103**  
17 **Palm Springs, CA 92262**

**A C C U S A T I O N**

18 **Physician's and Surgeon's Certificate**  
19 **No. A 95051,**

Respondent.

20 Complainant alleges:

21 **PARTIES**

22 1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official  
23 capacity as the Executive Director of the Medical Board of California, Department of Consumer  
24 Affairs (Board).

25 2. On or about April 21, 2006, the Board issued Physician's and Surgeon's Certificate  
26 No. A 95051 to Derakhsh Fozouni, M.D. (Respondent). The Physician's and Surgeon's  
27 Certificate was in full force and effect at all times relevant to the charges brought herein and will  
28 expire on September 30, 2021, unless renewed.

FILED  
STATE OF CALIFORNIA  
MEDICAL BOARD OF CALIFORNIA  
SACRAMENTO Sept. 26 20 19  
BY A. Becerra ANALYST

## JURISDICTION

3. This Accusation is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2220 of the Code states:

Except as otherwise provided by law, the board may take action against all persons guilty of violating this chapter. . .

5. Section 2227 of the Code states:

(a) A licensee whose matter has been heard by an administrative law judge of the Medical Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary action with the board, may, in accordance with the provisions of this chapter:

(1) Have his or her license revoked upon order of the board.

(2) Have his or her right to practice suspended for a period not to exceed one year upon order of the board.

(3) Be placed on probation and be required to pay the costs of probation monitoring upon order of the board.

(4) Be publicly reprimanded by the board. The public reprimand may include a requirement that the licensee complete relevant educational courses approved by the board.

(5) Have any other action taken in relation to discipline as part of an order of probation, as the board or an administrative law judge may deem proper.

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6. Section 2234 of the Code states:

The board shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

...

(b) Gross negligence.

(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or omissions. An initial negligent act or omission followed by a separate and distinct departure from the applicable standard of care shall constitute repeated negligent acts.

1 (1) An initial negligent diagnosis followed by an act or omission medically  
2 appropriate for that negligent diagnosis of the patient shall constitute a single  
3 negligent act.

4 (2) When the standard of care requires a change in the diagnosis, act, or  
5 omission that constitutes the negligent act described in paragraph (1), including, but  
6 not limited to, a reevaluation of the diagnosis or a change in treatment, and the  
7 licensee's conduct departs from the applicable standard of care, each departure  
8 constitutes a separate and distinct breach of the standard of care.

9 . . .

10 7. Section 2266 of the Code states:

11 The failure of a physician and surgeon to maintain adequate and accurate  
12 records relating to the provision of services to their patients constitutes unprofessional  
13 conduct.

14 **FIRST CAUSE FOR DISCIPLINE**

15 **(Gross Negligence)**

16 8. Respondent has subjected his Physician's and Surgeon's Certificate No. A 95051 to  
17 disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (b), of  
18 the Code, in that he committed gross negligence in his care and treatment of Patient A, as more  
19 particularly alleged hereinafter:<sup>1</sup>

20 9. On or about December 8, 2014, Patient A attended her first obstetric visit with  
21 Respondent. On this visit, Patient A was 10.5 weeks pregnant and her due date was July 2, 2015.  
22 Patient A continued to see Respondent through on or about June 22, 2015. During a visit that  
23 took place on or about May 18, 2015, Patient A's abdominal circumference measured at 37  
24 weeks, while the remaining measurements were at 33 weeks. Patient A was 34 weeks and 1 day  
25 pregnant on this visit. Respondent noted "poor nutrition" and that he discussed "poor outcome[s]  
26 and potential issues with birth and injury" with Patient A and her husband.

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<sup>1</sup> References to "Patient A" herein are used to protect patient privacy.

1           10. On or about the early morning of June 25, 2015, Patient A went to the hospital by  
2 ambulance. When speaking with Nurse P.M., the triage nurse, Patient A complained of leaking  
3 clear fluid before 3:00 a.m. At approximately 3:50 a.m., Nurse P.M. noted SROM (Spontaneous  
4 Rupture of Membranes), negative GBS (Group B Streptococcus), and "Fluid: thick meconium."<sup>2</sup>  
5 The meconium was described as large in quantity and odorless. Patient A was admitted to the  
6 hospital at approximately 4:16 a.m.

7           11. At approximately 5:01 a.m., Nurse P.M. spoke with Respondent by telephone  
8 regarding Patient A. Nurse P.M. relayed Patient A's complaints to Respondent, who then ordered  
9 Pitocin<sup>3</sup> to be started at 6:00 a.m.

10          12. At approximately 10:46 a.m., Nurse A.N. spoke with Respondent by telephone  
11 regarding Patient A and notified him of "prolonged decel[eration], SVE [sterile vaginal exam],  
12 contraction frequency, pitocin off, and interventions done." Respondent ordered that they wait  
13 for half an hour more to restart Pitocin and, if the prolonged decelerations continued, to do an  
14 amnioinfusion.

15          13. At approximately 2:30 p.m., Respondent was at the nurse's station reviewing the fetal  
16 heart rate (FHR) tracing. He was aware of Patient A's decelerations. Nurse A.N. noted that no  
17 new orders were received from Respondent. Respondent did not document any corresponding  
18 assessment or plan, nor the rationale for his decision-making at that time.

19          14. At approximately 5:00 p.m., Respondent was at the nurse's station and was notified  
20 of an SVE, Pitocin dose, and MVUs (Montevideo units). Nurse A.N. noted that no new orders  
21 were received. Respondent did not document any corresponding assessment or plan, nor the  
22 rationale for his decision-making at that time.

23          15. From approximately 6:15 a.m. until approximately 5:44 p.m., the presence of  
24 meconium was documented numerous times in the nurse notations. No subsequent notations  
25 regarding meconium were made until the next day during the C-section delivery.

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26               <sup>2</sup> Meconium is the baby's first stool, or poop, which is sticky, thick, and dark green. It is  
27 typically passed in the womb during early pregnancy and again in the first few days after birth.

28               <sup>3</sup> Pitocin is the synthetic version of oxytocin, a natural hormone that helps the uterus to  
contract during labor.

1       16. At approximately 7:19 p.m., Respondent was at the nurse's station and ordered that  
2 Pitocin be stopped at that time, restarted at 2:00 a.m., and then increased every 20 minutes  
3 thereafter by two milliunits. Respondent did not document any corresponding assessment or plan,  
4 nor the rationale for his decision-making at that time.

5       17. Between approximately 7:00 p.m. and 7:30 p.m., Respondent visited Patient A and  
6 her husband. According to a notation entered at approximately 7:15 p.m. by Nurse D.P., the plan  
7 of care was discussed with, and agreed to, by Patient A and her family. Respondent did not  
8 document this patient encounter, including any discussions he had with Patient A and her husband  
9 regarding the plan of care, the rationale for the plan of care, or any information relating to SRM,  
10 meconium, dilation, or the timing and need for a C-section.

11       18. At approximately 11:45 p.m., Respondent was at the nurse's station reviewing the  
12 FHR tracing. Nurse D.P. informed Respondent of Patient A's recurrent late decelerations.  
13 Respondent ordered Pitocin to be stopped and to prepare Patient A for a C-section in the morning.  
14 Respondent did not document any corresponding assessment or plan, nor the rationale for his  
15 decision-making regarding the C-section at that time.

16       19. The next day, on or about June 26, 2015, at approximately 4:32 a.m., Nurse D.P.  
17 spoke with Respondent and notified him of Patient A's recurrent late decelerations, UC (uterine  
18 contraction) pattern, and current temperatures, including a temperature of 100.1°F. Respondent  
19 stated that Terbutaline<sup>4</sup> may be given to Patient A and to consent Patient A for a C-section.  
20 Respondent further stated that he would perform a C-section in the morning.

21       20. At approximately 5:00 a.m., Patient A signed a hospital consent form for a primary  
22 C-section. According to a nursing note that was belatedly entered at approximately 7:50 a.m.,  
23 Respondent was at Patient A's bedside and obtained her informed consent for a C-section.

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28 <sup>4</sup> Terbutaline is a medication used to delay preterm labor. It belongs to a class of drugs  
called betamimetics, which help to prevent and slow contractions of the uterus.

1       21. According to a late entry nurse note, prior to approximately 7:39 a.m., Respondent  
2 was at the nurse's station. Nurse H.A. asked Respondent if he wanted to proceed with Patient A's  
3 case first or another scheduled case. Respondent decided to proceed with the other scheduled  
4 case.

5       22. According to a late entry nurse note, prior to approximately 7:45 a.m., Respondent  
6 was at the nurse's station reviewing the FHR tracings. Nurse L.N. noted that they were to get  
7 Patient A ready for a C-section "to follow the scheduled case."

8       23. On or about June 26, 2015, prior to the C-section surgery, Respondent completed and  
9 signed a "Physician Progress Note – Obstetrical Pre-Delivery Assessment Note." Respondent did  
10 not document the presence of thick meconium in his note.

11       24. At approximately 9:17 a.m., Patient A was transferred to the operating room.  
12 According to Respondent's operative report, the indication for surgery was "failure to dilate."

13       25. By the time of the C-section surgery, Patient A had been at 5 cm dilated since  
14 approximately 5:44 p.m. the previous day, a period of almost 16 hours. Patient A also had  
15 documented ruptured membranes for a period of almost 31 hours, having spontaneously ruptured  
16 at approximately 3:00 a.m. the previous day. In addition, Patient A had documented thick  
17 meconium. Since approximately 4:15 a.m. the previous day, Patient A also had nine SVEs and  
18 two internal devices placed, *i.e.*, an intrauterine pressure catheter and a fetal scalp electrode.

19       26. At approximately 9:56 a.m., Patient A gave birth to a baby girl. In his operative  
20 report, Respondent noted the presence of "[e]xtremely thick meconium" and "foul amniotic fluid"  
21 during the delivery. The baby required immediate resuscitation and intubation, and was promptly  
22 taken to the NICU department and, subsequently, to another hospital. The baby passed away later  
23 that night. The documented causes of death were cardiorespiratory failure, severe hypoxemia,  
24 severe hypotension, and septic shock from bacterial infection.

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1       27. Respondent committed gross negligence in his care and treatment of Patient A, which  
2 included, but was not limited to the following:

3           (a) On or about June 26, 2015, prior to approximately 7:39 a.m., Respondent  
4 delayed in proceeding with Patient A's C-section delivery in order to perform the  
5 scheduled C-section delivery of another patient, despite the presence of multiple,  
6 worsening risk factors that rendered Patient A's condition non-elective.

7                                   **SECOND CAUSE FOR DISCIPLINE**

8                                   **(Repeated Negligent Acts)**

9       28. Respondent has subjected his Physician's and Surgeon's Certificate No. A 95051 to  
10 disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (c), of  
11 the Code, in that he committed repeated negligent acts in his care and treatment of Patient A, as  
12 more particularly alleged in paragraphs 9 through 27, above, which are hereby incorporated by  
13 reference and re-alleged as if fully set forth herein.

14       29. Respondent committed repeated negligent acts in his care and treatment of Patient A,  
15 which included, but were not limited to the following:

16           (a) On or about June 26, 2015, prior to approximately 7:39 a.m., Respondent  
17 delayed in proceeding with Patient A's C-section delivery in order to perform the  
18 scheduled C-section delivery of another patient, despite the presence of multiple,  
19 worsening risk factors that rendered Patient A's condition non-elective.

20           (b) On or about June 26, 2015, at approximately 4:32 a.m., Respondent  
21 delayed in proceeding with Patient A's C-section delivery and did not follow up to  
22 provide a definitive C-section in a timely fashion, despite ongoing indications of  
23 Patient A's failure to progress and the presence of multiple risk factors.

24           (c) Respondent did not document an encounter with Patient A that took place  
25 on or about June 25, 2015, between approximately 7:00 p.m. and 7:30 p.m., including  
26 his discussion with Patient A and her husband regarding the plan of care, the rationale  
27 for the plan of care, or any information relating to SROM, meconium, dilation, or the  
28 timing and need for a C-section.

1 (d) Respondent did not document any assessment or plan regarding his  
2 decision on or about June 25, 2015, to perform a C-section the following morning,  
3 nor did he document the rationale for his decision-making relating to the C-section.

4 **THIRD CAUSE FOR DISCIPLINE**

5 **(Failure to Maintain Adequate and Accurate Medical Records)**

6 30. Respondent has subjected his Physician's and Surgeon's Certificate No. A 95051 to  
7 disciplinary action under sections 2227 and 2234, as defined by section 2266, of the Code, in that  
8 he failed to maintain adequate and accurate records regarding his care and treatment of Patient A,  
9 as more particularly alleged in paragraphs 9 through 29, above, which are hereby incorporated by  
10 reference and re-alleged as if fully set forth herein.

11 **FOURTH CAUSE FOR DISCIPLINE**

12 **(General Unprofessional Conduct)**

13 31. Respondent has subjected his Physician's and Surgeon's Certificate No. A 95051 to  
14 disciplinary action under sections 2227 and 2234 of the Code, in that he has engaged in conduct  
15 which breaches the rules or ethical code of the medical profession, or conduct which is  
16 unbecoming to a member in good standing of the medical profession, and which demonstrates an  
17 unfitness to practice medicine, as more particularly alleged hereinafter:

18 32. On or about June 22, 2015, Patient A had her last office visit with Respondent.  
19 Patient A's spouse was also present during the visit. Respondent performed a cervical exam on  
20 Patient A, during which he stated to Patient A: "Oh, I bet you like that."

21 **PRAYER**

22 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
23 and that following the hearing, the Medical Board of California issue a decision:

24 1. Revoking or suspending Physician's and Surgeon's Certificate No. A 95051, issued  
25 to Respondent Derakhsh Fozouni, M.D.;

26 2. Revoking, suspending or denying approval of Respondent Derakhsh Fozouni, M.D.'s  
27 authority to supervise physician assistants, pursuant to section 3527 of the Code, and advanced  
28 practice nurses;



1           3.     Ordering Respondent Derakhsh Fozouni, M.D., if placed on probation, to pay the  
2 Board the costs of probation monitoring; and

3           4.     Taking such other and further action as deemed necessary and proper.

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5     DATED: September 26, 2019

  
KIMBERLY KIRCHMEYER  
Executive Director  
Medical Board of California  
Department of Consumer Affairs  
State of California  
*Complainant*

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